

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

**JOSE PEREZ,**

**Plaintiff,**

**v.**

**RUSSELL TRANSPORT, INC.,**

**Defendant.**

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**No.: CV-11-436**

**NOTICE OF REMOVAL**

Defendant RUSSELL TRANSPORT, INC. (“Defendant”) files this Notice of Removal, removing Cause No. 2011-DCV-03923 from the 448<sup>th</sup> Judicial District Court, El Paso County, Texas to this Court pursuant to 28 U.S.C. §§ 1331, 1441, and 1446. The grounds for removal are as follows:

**PROCEDURAL BACKGROUND**

1. On September 22, 2011, Plaintiff Jose Perez (“Plaintiff”) filed his Original Petition against Defendant in the 448<sup>th</sup> Judicial District Court, El Paso County, Texas styled, *Jose Perez v. Russell Transport, Inc.*, Cause No. 2011-DCV-03923. Plaintiff is suing Defendant, his former employer, under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*

2. Defendant was served with Plaintiff’s Original Petition on September 30, 2011 and timely filed its Original Answer in state court on October 21, 2011. This removal is timely filed within 30 days of receipt of Plaintiff’s Original Petition. True and correct copies of all pleadings filed in state court are attached hereto.

### **FEDERAL QUESTION JURISDICTION**

3. In his Original Petition, Plaintiff alleges a cause of action against Defendant for failure to pay wages and retaliation in violation of the FLSA. Because Plaintiff's FLSA claim arises under the laws of the United States, this Court has original jurisdiction under 28 U.S.C. § 1331, and removal is proper pursuant to 28 U.S.C. § 1441(a).

### **PROPER VENUE AND COMPLIANCE WITH REMOVAL PROCEDURE**

4. Under 28 U.S.C. § 1441(a), venue of the removed action is proper in this Court as the district and division embracing the place where the state action is pending.

5. Defendant will promptly give adverse parties written notice of the filing of this Notice of Removal as required by 28 U.S.C. § 1446(d). Defendant will also promptly file a copy of this Notice of Removal with the Clerk of the 448<sup>th</sup> Judicial District Court, El Paso County, Texas, where the action is currently pending, also pursuant to 28 U.S.C. § 1446(d).

6. True and correct copies of all process, pleadings, and the orders served upon Defendant in the state court action are being filed with this notice as required by 28 U.S.C. § 1446(a) and attached hereto.

7. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty (30) days after service of the initial pleading setting forth a removable claim.

Accordingly, Defendant pursuant to these statutes and in conformance with the requirements set forth in 28 U.S.C. § 1446, removes the case styled *Jose Perez v. Russell Transport, Inc.*, Cause No. 2011-DCV-03923 from the 448<sup>th</sup> Judicial District Court, El Paso County, Texas on this 27th day of October, 2011.

Respectfully submitted,

KEMP SMITH LLP  
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El Paso, Texas 79999-2800  
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By: /s/ Gerald G. Howard  
GERALD G. HOWARD  
State Bar No. 24032309

Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was mailed by certified mail, return receipt requested, to Roger Davie, Roger Davie, P.C., 1801 N. Stanton, El Paso, Texas 79902, this 27th day of October, 2011.

/s/ Gerald G. Howard  
GERALD G. HOWARD